

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

08-OLR-01

James Moldenhauer
Attorney at Law

The Respondent, Attorney James Moldenhauer, practices in Eau Claire, Wisconsin.

On March 23, 2005, a client hired Respondent to probate his father's estate. An Application for Informal Probate was filed on March 25, 2005.

The general inventory for the estate was filed on November 28, 2005, and the final account was filed on January 23, 2006.

Respondent prepared the estate's final income tax returns and submitted them to the Internal Revenue Service (IRS) and the Wisconsin Department of Revenue (DOR).

On or about March 20, 2006, the client paid Respondent \$1616.33 for the attorney's fees and costs associated with probating his father's estate, and the two of them agreed that that amount constituted payment in full for Respondent's representation.

On May 31, 2006, the Probate Registrar sent Respondent a letter reminding him that he needed to close the estate or file a petition for an extension of time.

On September 19, 2006, the Probate Court (Court) issued an Order to Show Cause (OSC), scheduled to be heard on October 17, 2006, why the necessary action in the estate had not been taken.

Respondent did not appear at the OSC hearing on October 17, 2006. The Court issued another OSC on October 17, 2006 and scheduled it to be heard on November 3, 2006.

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Respondent said he missed the October 17, 2006 and November 3, 2006 OSC hearings because he was working with other clients, either in person or on the phone, and lost track of time. Respondent has no records to indicate that he notified the Court of his inability to attend.

The client said he attempted to contact Respondent several times by telephone, both before and after the October 17, 2006 and November 3, 2006 OSC hearings, to find out why the estate had not yet been closed, but Respondent never returned his calls. Respondent believed he responded to messages left on his answering machine, but said that sometimes the quality of his machine's reception is such that he is unable to identify the caller.

Respondent appeared at the November 17, 2006 OSC hearing and informed the Court the estate could not be closed because he had not received the closing certificate for fiduciaries from the DOR. The Court instructed Respondent to send a letter to the Court, with a copy to DOR, stating that the estate was ready to close but Respondent was waiting to receive the fiduciary closing certificate.

On December 4, 2006, the Probate Registrar sent Respondent a letter stating that the Court has not yet received the letter it had instructed Respondent to send on November 17, 2006. The Registrar's letter asked Respondent to file the letter within five days.

Respondent never filed the letter ordered by the Court on November 17, 2006.

On January 17, 2007, the Court issued another OSC and scheduled it to be heard on February 8, 2007. The OSC stated that filing the necessary closing documents by February 7, 2007 would lead to cancellation of the hearing.

According to the client, after he learned that the delay in closing the estate was caused by DOR's failure to send a closing certificate after it received the deceased's 2005 tax return, the client contacted the DOR and sent them a copy of the estate's tax return. The DOR subsequently sent the closing certificate to Respondent on February 2, 2007.

Respondent did not appear at the February 8, 2007 OSC hearing. The Court then issued a February 8, 2007 order which stated, in part:

NOW, THEREFORE, IT IS HEREBY ORDERED that unless a satisfactory explanation can be made to the Court for failure to appear and for failure to close this estate, that within ten days of this Order, Attorney [Respondent] shall deposit a check payable to the Estate of [client's father], (sic) the sum of \$1,616.33 as a complete refund for services rendered thus far.

The Court sent a February 8, 2007 letter to Respondent that enclosed the Court's Order. Respondent did not respond to the Court's February 8, 2007 letter and Order.

The Court subsequently issued a final OSC on March 6, 2007. On March 8, 2007, Respondent filed the closing certificate for fiduciaries and the estate was closed. Respondent did not deposit a check in the amount of \$1616.33 on that date.

Respondent states he did not attend the February 8, 2007 OSC hearing or respond to the Court's February 8, 2007 Order because he thought the fiduciary closing certificate had been filed prior to February 8, 2007, which would have cancelled the hearing.

The client filed a grievance on March 7, 2007, complaining about the above-described events and stating he believed he was entitled to the refund ordered by the Court.

After receiving notice of the grievance from the Office of Lawyer Regulation, Respondent sent the client a check, dated March 25, 2007, in the amount of \$1616.33.

By failing to advance the client's interests in closing his father's estate for almost a year and, particularly, by failing during that period of time to take steps to obtain a closing certificate

from the DOR so the estate could be closed, Respondent violated SCR 20:1.3, which states, “A lawyer shall act with reasonable diligence and promptness in representing a client.”

By failing to respond to the client’s numerous requests for information about the status of his father’s estate and why it had not yet been closed, Respondent violated former SCR 20:1.4(a), effective prior to July 1, 2007, which stated, “A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”

By failing to appear at the October 17, 2006, November 3, 2006, and February 8, 2007 hearings, after having been ordered by the Court to appear and show cause on those dates, and by failing to timely respond to the Court’s February 8, 2007 order, Respondent violated former SCR 20:3.4(c), effective prior to July 1, 2007, which stated, “A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.”

Respondent has prior discipline. In 2006, Respondent received a public reprimand for violations of SCR 20:1.3 and SCR 20:1.16(d) in two matters, and for failing to cooperate in both matters. In 1996, Respondent received a private reprimand for violations of SCR 20:1.3, SCR 20:1.4(a) and SCR 20:1.15(b) in a probate matter.

In accordance with SCR 22.09(3), Attorney James Moldenhauer is hereby publicly reprimanded.

Dated this 25th day of March, 2008.

SUPREME COURT OF WISCONSIN

/s/ Michael Ash
MICHAEL ASH, REFEREE